

REGULAR MEETING

BOARD OF ADJUSTMENT

Development & Business Services Center
1901 S. Alamo Street
BOARD ROOM
January 8th, 2007

MEMBERS PRESENT:

Michael Gallagher, Vice Chair
Rene Balderas
Raymond Flores
Jesse Jenkins
Paul Klein
Laura Lizcano
Mary Rogers
Gerald Yarbrough
Michael Dean
Marian Moffat

CITY STAFF PRESENT:

Chris Looney, Planning Manager
David T. Arciniega, Planner II
Michael Taylor, Planner II
Fernando Deleon, Interim Asst. Director
Ted Murphree, Assistant City Attorney II
Dolly F. Gonzalez, Admin. Secretary

"Call to Order and Invocation"

At 1:10 p.m. Mr. Gallagher called the meeting to order and Ms. Rogers presented the invocation.

Pledge of Allegiance to the United States and Texas Flags.

Ms. Moffat arrived at 1:10 p.m.

Mr. Arciniega informed the Board that Case A-07-004 was removed from the agenda due to problems relating to the ownership of the property.

Mr. Flores moved to remove Case A-07-004 Mr. Balderas seconded the motion and all members present voted in the affirmative.

Mr. Looney presented exiting Board Member Oscar Williams with a proclamation from the Mayor and a plaque thanking him for his years of service to the Board.

CASE NO. A-06-131PP

Applicant – Edgar Dodson
Lot 7, NCB 9727
1112 Rayburn Drive
Zoned: "R-4" Residential Single-Family District

The applicant was requesting a 3-foot variance from the Unified Development Code requirement that predominantly open fences in front yards be no taller than 4 feet, in order to keep a 6-foot tall wrought-iron fence with a 7-foot tall gate post in the front yard.

Mr. Arciniega presented background and Staff's recommendation of denial on this case.

There were 21 notices mailed, 10 were returned in favor and 0 were returned in opposition.

Discussion among the Board members ensued regarding why the applicant applied for a variance and not a special exception.

Gar Dodson of 2432 Southwest Loop 410 represented the applicant and answered the Board's concern regarding the fence. He explained that the street is used as a shortcut between Military and IH 35 therefore this fence will provide additional security for the applicant. He added that the reason the vertical bars are spaced less than 5 ½ inches is because the American Disabilities Act calls for 4 inch spaces; anything greater than that could allow a child to become stuck in between the bars.

FAVOR

Brenda Vasquez of 1119 Rayburn spoke in favor of the request.

Ron Singleton of 7251 Dwarf Palm spoke in favor of the request.

OPPOSED

None

Mr. Dodson clarified that the complaints received were regarding another neighborhood issue however upon inspection they found that this fence was not in compliance. The applicant purchased the home with the existing fence.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-06-131PP closed.

RESULTS:

MOTION made by Mr. Klein, "I move that the Board of Adjustment in Appeal A-06-131PP in requesting a 3-foot variance from the Unified Development Code requirement that predominantly open fences in front yards be no taller than 4 feet, in order to keep a 6-foot tall wrought-iron fence with a 7-foot tall gate post in the front yard, **grant the applicant's request** because the testimony presented to us and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship." "Such variance will not be contrary to the public interest, in that": The immediate public, neighbors, and residents in the area have voiced a very strong support through 10 notices that were mailed for this application out of the 21 notices that were mailed and there was no opposition received by mail nor at the hearing. "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that: The owners of the property; the Ramirez', purchased the property in 1999 and the fence was existing at that time and has not been embellished; to this board member's knowledge, since that time. And would represent an economic hardship to remove it given the situation that we have seen and heard today. "Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located" in that: The property is zoned R-4 residential single family district and it is occupied by a single family house and they are requesting that the fence be there to help safeguard their property in District 4. "Such variance will not substantially or permanently injure the district in which the variance is sought" in that: The fence has been in place since 1999, appears to have been well kept, and does not appear to be out of character with this community. "Such variance will not alter the essential character of the district in which the variance is sought" in that: For many of the exact same reasons described previously. "Such variance will be in harmony with the spirit and purposes of this chapter" in that: Of the numerous criteria that the Unified Development Code division made references in regard to front yard fences, this particular instance complies with all but one which relates to the spacing of the balusters and that is believed to comply with the spirit and purpose of this chapter. "The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located" in that: Specifically, this is not a self created hardship.

The property did come with the fence when it was purchased in 1999; based on testimony presented today. "The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district" in that: It will in fact help safeguard a property in District 4. "The variance will not adversely affect the public health, safety or welfare of the public" in that: It will actually help enhance public health and safety, will not create a traffic hazard by virtue of its location on Rayburn Drive. Motion seconded by Ms. Rogers.

The Board discussed the motion.

ROLL CALL VOTE: Mr. Klein, Ms. Rogers, Mr. Yarbrough, Mr. Dean, Ms. Moffat, Mr. Balderas, Mr. Flores, Mr. Jenkins, Ms. Lizcano, Mr. Gallagher. **The variance was granted unanimously.**

CASE NO. A-07-001

Applicant – Jesus M. Ballesteros
Lots 9 and 10, Block 4, NCB 13602
3114 Cindy Sue
Zoned: "R-6" Residential Single-Family District

The applicant was requesting a 2-foot variance from the Unified Development Code requirement that predominately open fences in front yards be no taller than 4 feet, in order to keep a 5-foot tall wrought iron fence with a 6-foot tall gate post in the front yard.

Mr. Arciniega presented background and Staff's recommendation of denial on this case because no special physical or topographical conditions exist on the property.

There were 19 notices mailed, 3 were returned in favor and 6 were returned in opposition.

The Chair read the notices.

Jesus M. Ballesteros of 3114 Cindy Sue Way spoke of his own behalf. He said he is trying to improve the neighborhood and he is concerned with the safety of his family because he was told that everyone in the neighborhood gets burglarized at least once. He said that the fence permit was for a 4-foot tall fence but he didn't think raising the arch to 5 feet would be a problem.

FAVOR

Felicia George of 3107 Shane spoke in favor of the applicant's request and stated that she did not think the Neighborhood Association still exists.

OPPOSED

Paula Villagrand of 3119 Cindy Sue spoke in opposition of the request and stated that the Neighborhood Association still exists and deed restrictions do not allow his request.

Mr. Looney addressed the issue of deed restrictions.

Pauline Keen of 3032 Cindy Sue Way spoke in opposition.

Deborah Keil of 3107 Cindy Sue Way spoke in opposition.

Mr. Ballesteros stated that his contractor was approached and told to stop the fence work. That is when he applied for the fence and he was later issued the deed restrictions from the Association President.

RESULTS:

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-07-001 closed.

MOTION made by Mr. Jenkins, "I move that the Board of Adjustment in Appeal A-07-001 in requesting a 2-foot variance from the Unified Development Code requirement that predominately open fences in front yards be no taller than 4 feet, in order to keep a 5-foot tall wrought iron fence with a 6-foot tall gate post in the front yard, **grant the applicant's request** because the testimony presented to us and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship." "Such variance will not be contrary to the public interest, in that": It will not alter the area in a drastic way. "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that: The crime deterrent was the request of the applicant. And "So that the spirit of the ordinance is observed and substantial justice is done" in that: The party has requested it. "Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located" in that: The area is zoned correctly. "Such variance will not substantially or permanently injure the district in which the variance is sought" in that: It will not have a negative impact upon the neighborhood. "Such variance will not alter the essential character of the district in which the variance is sought" in that: The structure is in keeping with the area. "Such variance will be in harmony with the spirit and purposes of this chapter" in that: It will maintain the character of the area. "The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located" in that: It will enhance the community. "The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district" in that: It will not weaken them. "The variance will not adversely affect the public health, safety or welfare of the public" in that: It will not create a safety or traffic hazard. Motion seconded by Mr. Yarbrough.

The Board discussed the motion.

ROLL CALL VOTE: Mr. Jenkins, Mr. Yarbrough, Mr. Dean, Ms. Moffat, Mr. Balderas, Mr. Flores, Mr. Klein, Ms. Lizcano, Ms. Rogers, Mr. Gallagher. **The variance was denied unanimously.**

The Board took a break and reconvened at 2:30 p.m.

CASE NO. A-07-002

Applicant – Abner Guajardo
The east irregular 320 feet of Lot 7, Block 3, NCB 16504
903 South Acme Road

zoned: "C-3NA GC-2 MAOZ-1" General Commercial Non Alcoholic Sales Highway 151 Gateway Corridor Military Airport Overlay Zone District and "I-1 GC-2 MAOZ-1" General Industrial Highway 151 Gateway Corridor Military Airport Overlay Zone District

The applicant was requesting a 2-foot variance from the Unified Development Code requirement that predominantly open fences in front yards be no taller than 4 feet, in order to keep a 6-foot tall chain-link fence in the front yard.

Mr. Taylor presented background and Staff's recommendation of denial on this case.

There were 11 notices mailed, 0 were returned in favor and 0 were returned in opposition.

Discussion ensued among the Board Members and Staff regarding the height restrictions for fences located in Industrial Districts abutting residential and the use of barbed wire.

Joe Gonzales of Gonzales Design Group represented the applicant. He explained that the applicant's request is to provide security and deter graffiti, vandalism and other crimes. He provided a slide presentation which showed vandalism on the buildings and other 6-foot tall fences with barbed wire in the area. He stated that they originally submitted and obtained a permit for a 4-foot tall fence but when they went to erect the fence, they noticed that the entire neighborhood had taller 6-foot fences so they decided to raise the fence to provide additional security. He explained that they did not pick up their plans from the City and when the inspector asked for the set of plans from the City, they picked them up and found that there were comments on the plans regarding the fence.

FAVOR

NONE

OPPOSED

NONE

RESULTS:

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-07-002 closed.

MOTION made by Ms. Rogers, "I move that the Board of Adjustment in Appeal A-07-002 in requesting a 2-foot variance from the Unified Development Code requirement that predominantly open fences in front yards be no taller than 4 feet, in order to keep a 6-foot tall chain-link fence in the front yard, **grant the applicant's request** because the testimony presented to us and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship." "Such variance will not be contrary to the public interest, in that": It will not adversely affect the overall area in which the fence will be located. "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that: There is a high potential for crime in that industrial area. And "So that the spirit of the ordinance is observed and substantial justice is done" in that: Protection for the business will be provided. "Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located" in that: Security fences are common in the area; of such height. "Such variance will not substantially or permanently injure the district in which the variance is sought" in that: It will not have a negative impact on the surrounding property. "Such variance will not alter the essential character of the district in which the variance is sought" in that: The higher fence is in keeping with the other higher fences in the surrounding area. "Such variance will be in harmony with the spirit and purposes of this chapter" in that: It will maintain existing streetscape. "The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located" in that: The potential for

me is great and the additional fence height is needed for the security of the property and the business assets. "The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district" in that: The proposed variance will not weaken the overall zoning plan of the area. "The variance will not adversely affect the public health, safety or welfare of the public" in that: The fence will not in any way, create or cause an adverse affect to the public. Motion seconded by Ms. Lizcano.

ROLL CALL VOTE: Ms. Rogers, Ms. Lizcano, Mr. Yarbrough, Mr. Dean, Ms. Moffat, Mr. Balderas, Mr. Flores, Mr. Jenkins, Mr. Klein, Mr. Gallagher. **The variance was granted unanimously.**

CASE NO. A-07-003

Applicant – Joe Stubblefield

Lots 5, 6, and Lots 18 through 27, and the north 121.16 feet of Lots 3 and 4 ARB A3, Block 2, NCB 1706
111 and 119 East Craig Place, 108 East Woodlawn Avenue and 2419 McCullough Avenue
Zoned: "MF-33 H" Historic Multi-Family District and "O-2 H" Historic Office District

The applicant was requesting **1)** a 5-foot variance from the Unified Development Code requirement that solid screen fences in front yards be no taller than 3 feet, in order to erect an 8-foot tall solid screen fence in the front yard along the side (west) property line, **2)** a 2-foot variance from the Unified Development Code requirement that fences in side or rear yards be no taller than 6 feet, in order to erect an 8-foot tall solid screen fence along the side (west) property line, and **3)** a 2-foot variance from the Unified Development Code requirement that predominantly open fences in front yards be no taller than 4 feet, in order to erect a 6-foot tall wrought iron fence the front yard.

Mr. Arciniega presented background and Staff's recommendation of denial for each of the variances in this case.

There were 21 notices mailed, 14 were returned in favor and 0 were returned in opposition.

Discussion ensued among the Board Members regarding the requested fence height.

Cherise Bell, Senior Planner explained that the Historic Design Review Committee granted a conceptual approval of the fence. She stated that they did not approve of the fence height, but they did approve that design that is in keeping with what already exists.

Joe Stubblefield of 1218 E. Euclid said that the school has existed for over 80 years and the fence was built 50 years ago. He explained where he wants to increase the height of the fence and said it is for the safety of the children that attend the school. They are seeking to limit access onto the campus and ways to get off the campus. He showed slides of the areas they wish to increase the height of the fences and or extend the fences. Additionally, they received support from many neighbors and the parents of the children have raised funds to support this venture.

Discussion ensued among the Board Members regarding the location, design, and height of the fence.

FAVOR

NONE

OPPOSED

ONE

RESULTS:

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-07-003 closed.

MOTION made by Mr. Flores, "I move that the Board of Adjustment in Appeal A-07-003 in requesting **1)** a 5-foot variance from the Unified Development Code requirement that solid screen fences in front yards be no taller than 3 feet, in order to erect an 8-foot tall solid screen fence in the front yard along the side (west) property line, **2)** a 2-foot variance from the Unified Development Code requirement that fences in side or rear yards be no taller than 6 feet, in order to erect an 8-foot tall solid screen fence along the side (west) property line, and **3)** a 2-foot variance from the Unified Development Code requirement that predominantly open fences in front yards be no taller than 4 feet, in order to erect a 6-foot tall wrought iron fence in the front yard, **grant the applicant's request** because the testimony presented to us and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship." "Such variance will not be contrary to the public interest, in that": The applicant is a long-standing school and neighbor in the Monte Vista Community is trying to encourage both safety for the community and to keep the aesthetics close to what the Monte Vista Neighborhood is looking for. "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that: Even though, there aren't any topographical issues, there are safety issues and there are education issues with respect to what is driving this application. And "So that the spirit of the ordinance is observed and substantial justice is done" in that: The school's long history and it's moving through the process in working with HDRC, as well as the architectural committee for Monte Vista, clearly they have made a concerted effort to work through the process; and have now presented a reasonable case to this board. "Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located" in that: I believe, the case has been made and the drawings submitted for the record are in keeping with the neighborhood and the guidelines imposed by Monte Vista as well as the UDC. "Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located" in that: I believe that the proposed sketches and the addition of the fence will be in keeping with the character of the neighborhood. "Such variance will not alter the essential character of the district in which the variance is sought" in that: I think it is simply an updating and improvement to what is already in character with the area. "Such variance will be in harmony with the spirit and purposes of this chapter" in that: It allows for a school that has been around for a long time to update its facilities and provide better options for its students in terms of security and pleasing aesthetics for the neighborhood. "The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located" in that: Obviously, testimony was presented for the Board with regard to the height of the fence from inside versus outside as justification for why the additional height on Craig Place, as well as the 8-foot fence on Woodlawn is necessary. "The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district" in that: This is merely a change and an update, as mentioned earlier with regard to providing safety for the students and in no way is moving away from or detracting from the character of the neighborhood. "The variance will not adversely affect the public health, safety or welfare of the public" in that: The campus is pretty self-contained as was presented earlier. It abuts commercial and it abuts high traffic area on McCullough and therefore the taller fence heights and the addition of new style of fences is warranted. Motion seconded by Ms. Rogers.

The Board discussed the motion.

OLL CALL VOTE: Mr. Flores (F), Ms. Rogers (F), Mr. Yarbrough (F), Mr. Dean (F), Ms. Moffat (O), Mr. Balderas (F), Mr. Jenkins (F), Mr. Klein (F), Ms. Lizcano (O), Mr. Gallagher (F). **By a vote of 8 in favor and 2 opposed, the requested variances failed.**

The Board discussed the original motion.

Mr. Klein moved to re-open the evidence portion of the case, Mr. Balderas second the motion and all members present voted in the affirmative.

Mr. Stubblefield answered questions regarding the exact location of the proposed solid screen fence.

Mr. Looney clarified that within the side yard a 6-foot tall fence is allowed by right and within the front yard a 3-foot tall solid screen fence is allowed by right. Because the applicant is requesting an 8-foot tall fence along the entire side property line; within the front yard and the side yard, they are requiring two separate variances.

Discussion continued regarding the need to protect the students.

Janet Mollack of 131 W. Agarita spoke regarding the increase of crime in the area.

Mr. Stubblefield asked for a postponement.

Ms. Rogers moved for a postponement.

Ms. Moffat asked that the applicant continue to explain the position of the Monte Vista Historic Association.

Mr. Stubblefield replied that if there were objections someone from the association would have been present.

The Chair declared the public hearing of Case No. A-07-003 closed and called for a recess to allow Legal Staff to confirm how to re-introduce the motion.

Mr. Flores moved to re-introduce the original motion as stated earlier, including the findings of fact, and added that the applicant is trying to be pro-active in protecting the safety and welfare of the children. Ms. Rogers seconded the motion.

ROLL CALL VOTE: Mr. Flores (F), Ms. Rogers (F), Mr. Yarbrough (F), Mr. Dean (F), Ms. Moffat (F), Mr. Balderas (F), Mr. Jenkins (F), Mr. Klein (F), Ms. Lizcano (O), Mr. Gallagher (F). **By a vote of 9 in favor and 1 opposed, the requested variances were approved.**

"Presentation of new evidence and a request by Artemisa Cerda to re-open Case Number A-06-130 and waive the 1-year time limitation for an appeal for property addressed at 226 Garfield Street"

The Board discussed the request and considered the new evidence submitted.

Mr. Klein moved to waive the one-year time limitation and re-open Case A-06-130 to allow the applicant to come before the Board. Ms. Moffat seconded the motion and all members present voted in the affirmative.

"Approval of the minutes from the regular meeting on December 18, 2006"

Yarbrough moved to approve the minutes of December 18, 2006, Mr. Jenkins seconded the motion and all members present voted in the affirmative.

"Staff Report"

Mr. Flores inquired as to the status of cases that were postponed pending the fence amendment.

Mr. Looney advised him that only two cases were continued.

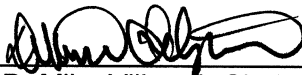
Staff announced the terms that were up for renewal and an update was given on the status of co-member Gene Camargo.

Ted Murphree reminded the Board that the burden of proof lays solely on the applicant and the members cannot lead the applicant. The Board Members should act as a jury and not as an advocate to the applicant. It is the applicant's responsibility to meet the 10 items in the findings of fact. He urged the members to exercise caution in dealing with the public. He also advised that he would not longer be counsel to the Board but may return in the future. Jon Kaplan, Assistant City Attorney III, will resume as Board Counsel.

"Executive Session"

NE

There being no further discussion, meeting adjourned.

APPROVED BY:  DATE: Feb 15, 2007 OR Michael Gallagher, Vice-Chair
D. Mike Villyard, Chairman

ATTESTED BY:  DATE: 2-15-07
Christopher J. Looney
Development Services, Planning Manager